

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Rosemarie Grell	:	
	:	
v.	:	C-2019-3012992
	:	
Suez Water Pennsylvania, Inc.	:	

INITIAL DECISION

Before
Dennis J. Buckley
Administrative Law Judge

INTRODUCTION

This Initial Decision sustains the formal Complaint of Rosemarie Grell (Complainant) against Suez Water Pennsylvania, Inc. (Suez or Respondent) alleging that Suez failed to render adequate and reasonable service as is required by the Public Utility Code (Code) and the rules and regulations of the Public Utility Commission (Commission). The Complaint is sustained because Complainant proved by a preponderance of the evidence that Suez violated a provision of the Code, specifically Section 1501 (66 Pa. C.S. § 1501), by failing to render adequate and reliable service.

HISTORY OF THE PROCEEDING

On September 10, 2019, Rosemarie Grell filed a formal Complaint against Suez Water Pennsylvania, Inc. alleging that Suez had not provided reliable and adequate service in that as a result of a water main replacement, the water pressure at her service address had dropped to unacceptable levels. Complainant operates a beauty salon in the same building as her

residence, and she further averred that the drop in water pressure has adversely affected the salon's operations.

On October 9, 2019, Suez filed an Answer to the Complaint stating that Complainant is one of nine residents along Thornton Drive in Upper Allen Township, Cumberland County, who have complained of low water pressure. After explaining the process of water main replacement, Suez contended that the new pressure levels are within the permitted range of not less than 25 psi nor more than 125 psi at the main found in 52 Pa. Code § 65.6, although Suez conceded that the new pressure levels are less than what had been available. Suez asked that the Complaint be dismissed.

On October 23, 2019, Chief Administrative Law Judge Charles E. Rainey, Jr., referred this matter to the Commission's Mediation Unit. No resolution was reached, and a hearing Notice was issued on April 30, 2020, setting June 24, 2020, as the date for a telephonic evidentiary hearing in this matter.

On June 1, 2020, a standard form prehearing Order was issued to the parties.

On June 24, 2020, a telephonic evidentiary hearing convened pursuant to Notice. Complainant appeared and testified on her own behalf. She presented no exhibits. Thomas T. Niesen, Esquire, appeared on behalf of Suez and offered the testimony of Arthur Saunders, the Engineering Manager for Suez. The following exhibits offered by Suez were admitted to the record: Suez Exhibit 1, a letter to customers with respect to the water main improvement project; Suez Exhibit 2, a service line pressure study; Suez Exhibit 3, a map of elevations in the Center Square pressure district; Suez Exhibit 4, a 14-day hydrograph of pressure readings; and Suez Exhibit 5, a 7-day hydrograph of pressure readings.

On October 29, 2020, a 36-page transcript and the Suez exhibits admitted to the record were filed by the court reporter. The transcript and exhibits constitute the record in this case. After the hearing, the presiding officer recommended that the parties again try to settle this matter.

On January 10, 2022, an Order was issued posing the following questions to the parties: Have settlement discussions taken place, and what was the outcome; has there been any change in water pressure since the evidentiary hearing; and, if a device exists that can remedy the water pressure issue, I asked Suez to identify, with specificity, the name of the device.

On January 12, 2022, the parties provided an email response to the questions asked by the presiding officer on January 10, 2022. On the basis of those responses, an Order was issued closing the record in this matter on March 30, 2022.

This matter is ready for disposition.

For the reasons explained, below, Complainant has met her burden of proving, by a preponderance of the evidence, that Suez has violated the Public Utility Code at 66 Pa.C.S. § 1501 in that Suez has failed to provide adequate and reliable service. Her Complaint is sustained, and Suez is to restore service at the same level of adequacy that Complainant had before the replacement of the water main serving Complainant post-February, 2018.

FINDINGS OF FACT

1. The Complainant in this case is Rosemarie Grell.
2. Suez Water Pennsylvania, Inc., a Commission jurisdictional water company, is the Respondent.
3. Complainant receives service from Suez at 906 Thornton Drive, Mechanicsburg, Pennsylvania.
4. Complainant receives water service from Suez at that address to her home and to her salon business which are co-located at the same address. Tr. at 5.
5. Around February, 2018, Complainant had water pressure of around 65 psi in her residence. Tr. at 6.

6. When Suez completed its main replacement work, the water pressure at Complainant's address dropped. Tr. at 6.

7. A private plumber hired by Complainant could find no condition inside the home that would be responsible for the drop in water pressure. Tr. at 7-8.

8. As a result of the drop in water pressure, the ability of Complainant to use water in her residence and salon attached to the residence has dropped to unacceptable levels. Tr. at 7-8; 10-11.

9. Complainant's water consumption is typically between 3,000 and 4,000 gallons per month, and this was the case before main replacement. Tr. at 14-15.

10. Arthur Saunders is the Engineering Manager for Suez and is responsible for all capital improvement projects, including water meter replacement and upgrade projects. Tr. at 17.

11. Due to water quality issues and chronic water main breaks and leaks, the existing four-inch asbestos cement and galvanized water main in the area of Complainant's residence was replaced in 2018-2019 with an eight-inch ductile iron water main. Tr. at 18.

12. The area in which Complainant resides was previously served hydraulically off the Grantham tank from an old four-inch cast iron pipe. Tr. at 18.

13. The four-inch cast iron pipe was installed under State Route 15 through a stormwater retention area and wetlands, and across private property. Tr. at 18.

14. Because of the location of the pipe and the inability of Suez to procure an easement across private property, Suez decided to absorb the Thornton Drive area to be served hydraulically off of the Center Square tank. Tr. at 18.

15. As part of the planning process for the water main upgrade project, Suez evaluated the water pressure in the Center Square and Grantham distribution systems through hydraulic modeling. Tr. at 18.

16. There was an approximately 25 psi difference in the pressures between the systems. Tr. at 19.

17. The pressure in the Center Square area connected to the Grantham pressure district ranged from approximately 65 psi to 80 psi. Tr. at 19.

18. The pressure in the area served by the Center Square pressure district is approximately 40 to 65 psi. Tr. at 19.

19. Suez decided to serve all of the Center Square from the Center Square distribution system. Tr. at 19.

20. This decision reduced the water pressure along Thornton Drive to 40 psi to 50 psi. Tr. at 19.

21. Suez maintains that the increased water main size provides more reliable flow in the ability for fire flow protection. Tr. at 19.

22. Suez maintains that post-project field testing shows pressures to be within the range of the modeled data. Tr. at 19.

23. Suez Exhibit 1 is a letter dated February 12, 2018, whereby affected customers were advised by Suez of the planned main replacement. Tr. at 19; Suez Exhibit 1.

24. When the project was completed, the water pressure along parts of Thornton Drive were less than what had been available when the area was part of the Grantham pressure district. Tr. at 21.

25. The new water pressure is within the required range of not less than 25 psi nor more than 125 psi at the main. Tr. at 21.

26. Suez conducted a pressure study on the service line to 910 Thornton Drive from October 11, 2019, through October 25, 2019, during which time the pressure logger recorded the pressure every two minutes during the two-week period. Tr. at 21.

27. Suez Exhibit 2 is a document that shows the results recorded by the pressure logger. Tr. at 22; Suez Exhibit 2.

28. Exhibit 2 shows the minimum, average and maximum pressure recording during each two-minute period. Tr. at 22.

29. During the period of the test, the average pressure was 41 psi with a minimum recorded pressure of 33.7 psi and a maximum of 49.48 psi. Tr. at 22.

30. Complainant's residence at 906 Thornton Drive is at an elevation of 483 feet, the high point of the street, so it would have the lowest pressure along the street. Tr. at 22; Suez Exhibit 3.

31. According to Commission records, a formal Complaint alleging inadequate and unreasonable service based on a drop in water pressure was filed by Dennis Heston, who resides at 910 Thornton Drive, at Docket No. C-2019-3012999.

32. The elevation at 910 Thornton Drive is also 483 feet. Tr. at 23; Suez Exhibit 3.

33. Suez Exhibit 3 is an elevation map for the area of Complainant's residence but shows other points in the Center Square pressure district. Tr. at 23; Suez Exhibit 3.

34. Suez Exhibit No. 4 is a 14-day hydrograph of the pressures at data points collected by the data logger installed on the service line at 910 Thornton Drive, the residence of Mr. Heston. Tr. at 24; Suez Exhibit 4.

35. Suez Exhibit 5 is a seven-day hydrograph of the pressures at data points collected by the data logger installed on the service line at 910 Thornton Drive, the residence of Mr. Heston. Tr. at 24; Suez Exhibit 5.

36. Both hydrographs show pressure above 25 psi for the testing period for 910 Thornton Drive, the residence of Mr. Heston. Tr. at 24; Suez Exhibits 4, 5.

DISCUSSION

As the proponent of a rule or order, the Complainant in this proceeding bears the burden of proof pursuant to Section 332(a) of the Public Utility Code. 66 Pa.C.S. § 332(a). To satisfy this burden, the Complainant must demonstrate that Respondent was responsible for the problems alleged in her Complaint through a violation of the Public Utility Code or a regulation or order of the Commission. This must be shown by a preponderance of the evidence. 66 Pa. C.S. §701; *Patterson v. Bell Tel. Co. of Pa.*, 72 PA P.U.C. 196 (1990). Preponderance of the evidence means that the party with the burden of proof has presented evidence that is more convincing than that presented by the other party. *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n*, 578 A.2d 600 (Pa. Cmwlth. 1990) *alloc. den.*, 602 A.2d 863 (Pa. 1992). In addition, the Commission's findings of fact must be supported by "substantial evidence," which consists of evidence that a reasonable mind might accept as adequate to support a conclusion. A mere trace of evidence or a suspicion of the existence of a fact is insufficient. *Norfolk & W. Ry. v. Pa. Pub. Util. Comm'n*, 413 A.2d 1037 (Pa. 1980).

Upon the presentation by the Complainant of evidence sufficient to initially satisfy the burden of proof, the burden of going forward with the evidence to rebut the evidence of the Complainant shifts to the Respondent. If the evidence presented by the Respondent is of co-equal weight, the Complainant has not satisfied her burden of proof. The Complainant now

has to provide some additional evidence to rebut the evidence of the Respondent. *Burleson v. Pa. Pub. Util. Comm'n*, 443 A.2d 1373 (Pa. Cmwlth. 1982), *aff'd*, 461 A.2d 1234 (Pa. 1983).

While the burden of persuasion may shift back and forth during a proceeding, the burden of proof never shifts. The burden of proof always remains on the party seeking affirmative relief from the Commission. *Milkie v. Pa. Pub. Util. Comm'n*, 768 A.2d 1217 (Pa. Cmwlth. 2001).

In this case, Complainant alleged that Suez had failed to render adequate, efficient, safe and reasonable service.

A quality of service issue is within the Commission's jurisdiction under Section 1501 of the Public Utility Code, which states in pertinent part:

§ 1501. Character of service and facilities

Every public utility shall furnish and maintain adequate, efficient, safe, and reasonable service and facilities, and shall make all such repairs, changes, alterations, substitutions, extensions, and improvements in or to such service and facilities as shall be necessary or proper for the accommodation, convenience, and safety of its patrons, employees, and the public. Such service also shall be reasonably continuous and without unreasonable interruptions or delay. Such service and facilities shall be in conformity with the regulations and orders of the commission.

66 Pa. C.S. § 1501.

Thus, the statute at 66 Pa.C.S. § 1501 governs any allegations of unreasonable or inadequate service. Pursuant to 66 Pa.C.S. § 1501, the Commission has original jurisdiction over the reasonableness and adequacy of public utility service. *Elkin v. Bell Tel. Co. of Pa.*, 372 A.2d 1203 (Pa. Super. 1977), *aff'd* 420 A.2d 371 (Pa. 1977); *Behrend v. Bell Tel. Co. of Pa.*, 243 A.2d 346 (Pa. 1968). As a general proposition, neither the Public Utility Code nor the Commission's regulations require public utilities to provide constantly flawless service. The Public Utility Code at 66 Pa.C.S. § 1501 does not require perfect service or the best possible service but does require public utilities to provide reasonable and adequate service. *Analytical Lab. Servs., Inc. v.*

Metro. Edison Co., Docket No. C-20066608 (Opinion and Order entered December 21, 2007); *Emerald Art Glass v. Duquesne Light Co.*, Docket No. C-00015494 (Opinion and Order entered June 14, 2002); *Re: Metro. Edison Co.*, 80 Pa. PUC 662 (1993).

Further, the term “service” is defined broadly under Section 102 of the Code to include any and all acts done, rendered, or performed, and any and all things furnished or supplied, and any and all facilities, used, furnished or supplied by public utilities. See 66 Pa.C.S. § 102. The statutory definition of “service” is also to be broadly construed by the Commission and the courts. *Country Place Waste Treatment Co., Inc. v. Pa. Pub. Util. Comm’n*, 654 A.2d 72 (Pa. Cmwlth. 1995). “Inappropriate and unreasonable treatment to customers can be interpreted as inadequate service[.]” *Lolly v. Duquesne Light Co.*, Docket No. C-2010-2167824 (Opinion and Order entered May 9, 2011) (citing *O’Toole v. Metro. Edison Co.*, Docket No. C-20030854 (Opinion and Order entered May 9, 2005)).

As was established by the evidence presented by both parties, the present controversy began in 2018 when Suez embarked on the Center Square main replacement project to address the deterioration of that water main. When the project was completed, the water pressure along parts of Thornton Drive where Complainant’s residence and business are located was less than what had been available when Complainant’s residence and business were served as part of the Grantham pressure district. Easement procurement issues had compelled Suez to site the main replacement in such a way that Complainant’s residence received service from a different pressure district.¹ Tr. at 18-19.

Complainant testified that after the replacement of the water main in her area the water pressure in her home dropped substantially:

I have a beauty salon in my home. It's just me, just a single operator salon, and I am so having a hard time rinsing colors and perms. And I had contacted them several times and they said, you know, "You're going to see a lower pressure for a little bit until we can get the system back up," you know. Okay, so I

¹ This Complaint concerns the same issue as that considered in *Heston v. Suez Water, Inc.*, Docket No. C-2019-3012999. Suez objected to the consolidation of these Complaints, so that case is the subject of a separate Initial Decision.

worked with them, I worked with them, and it makes it really hard to, you know, continue working. If somebody flushes a toilet, you can guarantee there is no water at your kitchen sink, none.

* * *

[T]here's just not enough water pressure to do anything. I mean, it's terrible. We can't even use -- our garden hoses don't even want to fill up and get the kinks out of them.

Tr. at 6-8.

No relevant or persuasive evidence was offered by Suez to rebut this testimony, and I find Complainant's testimony credible.

Through the testimony of its witness, Mr. Saunders, Suez conceded that when the Center Square main replacement project was completed, the water pressure along parts of Thornton Drive were less than what had been available when the area was part of the Grantham pressure district. Suez argued that this drop in pressure is acceptable given technical compliance with the Commission's regulation at 52 Pa. Code § 65.6. which states in pertinent part:

(a) *Variations in pressure.* The utility shall maintain normal operating pressures of not less than 25 p.s.i.g. nor more than 125 p.s.i.g. at the main, except that during periods of peak seasonal loads the pressures at the time of hourly maximum demand may be not less than 20 p.s.i.g. nor more than 150 p.s.i.g. and that during periods of hourly minimum demand the pressure may be not more than 150 p.s.i.g. A utility may undertake to furnish a service which does not comply with the foregoing specifications where compliance with such specifications would prevent it from furnishing adequate service to any customer or where called for by good engineering practices. The authority of the Commission to require service improvements incorporating standards other than those set forth in this subsection when, after investigation, it determines that such improvements are necessary is not hereby restricted.

52 Pa. Code § 65.6(a).

That the new water pressure at Complainant's residence is *arguably* within the required range of not less than 25 psi nor more than 125 psi at the main does not refute Complainant's claim that Suez has not provided reliable and adequate service.² Further, compliance with the requirements of the Commission's regulation at 52 Pa. Code § 65.6 does not in itself prove that Complainant is being provided with adequate service within the meaning of 66 Pa.C.S. § 1501. When there has been such a pronounced deterioration in the quality of service as has been established by Complainant's uncontradicted testimony and which has been caused by the utility, then the utility has violated the requirements of Section 1501. This includes rendering inadequate water pressure.³

Suez also attempted to argue that the drop in pressure was somehow Complainant's responsibility through uncorroborated hearsay evidence based on the claimed reports of a third-party contractor who did not appear or testify at hearing. Part of this hearsay was calculated to show that in some way the issue with the pressure at Complainant's residence was attributable to a problem with the service line and would therefore be Complainant's responsibility to correct. The uncorroborated testimony of a third party cannot form the basis of a decision, and even if we assume, *arguendo*, that this hearsay is admissible, it is so lacking in detail as to be conjecture.

While Complainant, who is not an attorney, did not object to the hearsay testimony elicited from Mr. Saunders, I decline to consider such hearsay. It is well established that an administrative decision based on hearsay may be overturned by the courts. *Bridges v.*

² The conclusion that the water pressure at Complainant's address is at a required level is merely inferential from Mr. Saunders' testimony as Suez Exhibits 4 and 5 are hydrographic studies conducted for Mr. Dennis Heston's neighboring residence, and so those exhibits are of limited evidentiary value.

³ The issue of adequacy of service related to residential water pressure is unusual though not unknown. In *Honey Brook Water Co. v. Pa. Pub. Util. Comm'n*, 647 A.2d 653 (Pa. Cmwlth. 1994), Complainants, customers of a utility company, filed a complaint with the Commission alleging that petitioner violated 66 Pa.C.S. § 1501 by not providing sufficient water pressure. The ALJ sustained the complaint, ordered petitioner to have a well required by a prior order of the Commission in operation within 45 days or pay a fine, and directed the issuance of an order to show cause requiring the utility to show cause why it should not be fined for disobeying the prior order. The utility filed exceptions which the Commission denied, and the Commonwealth Court upheld the Commission on appeal. The court also held that there was sufficient evidence to find that petitioner did not provide service as required by Section 1501, and that the Commission's orders were proper under 66 Pa.C.S. § 1501. See also *Fox Ridge Vill., LP v. Pa. Pub. Util. Comm'n*, 258 A.3d 1161 (Pa. Cmwlth. 2021 Unpublished) (Utility acted reasonably when it refused to provide water service to homes located above 1,220 feet in a development until after the developer installed a booster pump station and a diesel generator to increase water pressure.)

Wixon, 326 U.S. 135 (1945). For this reason, Pennsylvania courts do not regard the hearsay rule as a technical rule of evidence, but a basic, vital and fundamental rule of law, which ought to be followed by administrative agencies at those points in their hearings, when facts crucial to an issue are sought to be placed upon the record. *Bleilevens v. Pa. State Civil Serv. Comm'n*, 312 A.2d 109 (Pa. Cmwlth. 1973). The general rule is that hearsay evidence, properly objected to, is not competent to support a finding in an administrative hearing; however, hearsay evidence admitted without objection may support a finding, only if corroborated by competent evidence in the record. *Anderson v. Pa. Dep't of Pub. Welfare*, 468 A.2d 1167 (Pa. Cmwlth. 1983). The Commission's hearsay determinations are governed by these standards.

In fact, through the testimony of its witness, Mr. Saunders, Suez conceded that when the Center Square main replacement project was completed, the water pressure along parts of Thornton Drive was less than what had been available when the area was part of the Grantham pressure district.⁴ Again, that the new water pressure at Complainant's residence is within the required range of not less than 25 psi nor more than 125 psi at the main does not refute Complainant's claim that Suez has failed to provide reliable and adequate service. Reasonable and adequate utility service cannot be provided when the actions of a utility, no matter how well intended, substantially degrades the quality of service previously enjoyed by a customer. As stated above, technical compliance with the Commission's regulation at 52 Pa. Code § 65.6 is not dispositive of the issue in this case. Having caused the decline in quality of service, Suez must take the necessary steps to restore the same quality of service that Complainant enjoyed before Suez replaced the water main that led to the drop in water pressure at the service address.⁵

For the reasons explained, above, Complainant has met her burden of proving, by a preponderance of the evidence, that Suez has violated the Public Utility Code at 66 Pa.C.S.

⁴ While I find the testimony of Mr. Saunders credible with respect to the work conducted after February, 2018, in relation to the Center Square main replacement project and the factual determination of water pressure after completion of that project, Mr. Saunders is not an attorney, and he is not qualified to testify as to the application of 52 Pa. Code § 65.6(a) in this case or to interpret the adequacy of service issue.

⁵ That restoration of pressure is possible was made clear through Mr. Saunders' testimony with respect to the placement of a pressure pump. Tr. at 28. I note that in her testimony, Complainant had discussed this possibility, but Counsel objected to that testimony as hearsay and as derived from settlement discussions that preceded the hearing. I sustained that objection, but Counsel then effectively waived his own objection in reintroducing the matter of installation of a pressure pump through the direct examination of Suez's own witness.

§ 1501 in that Suez has failed to provide adequate and reliable service. Ms. Grell's Complaint is sustained, and Suez is to restore service to the same level of adequacy that Complainant enjoyed before February, 2018.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the subject matter and parties to this proceeding. 66 Pa.C.S. § 701.

2. Pursuant to 66 Pa.C.S. § 332(a), the burden of proof in this proceeding is on the Complainant.

3. To satisfy this burden, the Complainant must demonstrate that Respondent was responsible for the problems alleged in her Complaint through a violation of the Public Utility Code or a regulation or order of the Commission; this must be shown by a preponderance of the evidence. 66 Pa.C.S. §701; *Patterson v. Bell Tel. Co. of Pa.*, 72 PA P.U.C. 196 (1990).

4. Every public utility shall furnish and maintain adequate, efficient, safe, and reasonable service and facilities, and shall make all such repairs, changes, alterations, substitutions, extensions, and improvements in or to such service and facilities as shall be necessary or proper for the accommodation, convenience, and safety of its patrons, employees, and the public. Such service also shall be reasonably continuous and without unreasonable interruptions or delay. 66 Pa.C.S. § 1501.

5. While the Public Utility Code at 66 Pa.C.S. § 1501 does not require perfect service or the best possible service, it does require public utilities to provide reasonable and adequate service. *Analytical Lab. Servs., Inc. v. Metro. Edison Co.*, Docket No. C-20066608 (Opinion and Order entered December 21, 2007); *Emerald Art Glass v. Duquesne Light Co.*, Docket No. C-00015494 (Opinion and Order entered June 14, 2002); *Re: Metro. Edison Co.*, 80 Pa. PUC 662 (1993).

6. Complainant has demonstrated by a preponderance of the evidence that Suez violated a provision of the Code or a regulation of the Commission, and so her Complaint is sustained. 66 Pa.C.S. §§ 332(a), 1501.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Complaint of Rosemarie Grell against Suez Water Pennsylvania, Inc., at Docket No. C-2019-3012992, is hereby sustained.

2. That Suez Water Pennsylvania Inc., is directed to restore Complainant's service to the level that she had before February, 2018, in compliance with the requirements of 66 Pa.C.S. § 1501 and the terms of this Decision.

3. That upon verification by Suez Water Pennsylvania Inc. to the Secretary of the Commission that the remediation ordered in Ordering Paragraph 2, above, has been completed, that the Secretary shall mark this matter closed.

Dated: May26, 2022

/s/
Dennis J. Buckley
Administrative Law Judge